

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

TRICORE, INC.,
Plaintiff,

v.

SAFECO INSURANCE COMPANY OF
AMERICA, and R.P. IANNUCCILLO &
SONS CONSTRUCTION CO.,
Defendants.

CIVIL ACTION NO. 04-12393-JGD

JOINT STATEMENT PURSUANT TO EXPENSE
AND DELAY REDUCTION PLAN

The parties have conferred as required by Fed. R. Civ. P. 26(f) and propose the discovery plan set forth below, pursuant to Rule 26(f), Rule 16.1(D) of the Local Rules, and this Court's April 4, 2005 Notice of Scheduling Conference.

The parties wish to specifically bring to the Court's attention that as of the date of this Joint Statement, Safeco Insurance Company of America ("Safeco") has yet to select counsel to represent it in connection with the cross-claim asserted against it by co-defendant R.P. Iannuccillo & Sons Construction Co. ("Iannuccillo"). The law firm of Cetrulo & Capone LLP, which represents Safeco with respect to the claims asserted against it by Plaintiff Tricore, Inc. ("Tricore") on Safeco's performance bond, is unable to represent Safeco in connection with Iannuccillo's cross-claim on Safeco's payment bond, due to a potential conflict of interest with respect to these discrete claims against the bonds issued by Safeco. The undersigned counsel for Safeco understands that Safeco is aware of this issue and is making every effort to address the situation.

I. Introduction

The action was brought by Tricore asserting breach of contract, the covenant of good faith and fair dealing and violations of Mass. G.L. Ch. 93A against each of the Defendants, and breach of Mass. G.L. Ch. 176D with respect to Safeco Safeco, in connection with Tricore's allegations that Iannuccillo failed to adequately perform its contractual obligations as required under a subcontract between it and Tricore relative to Tricore entering into an agreement to perform services as a general contractor for Sherrill House, Inc., relating to the Frank Wood expansion project in Boston, Massachusetts (the "Project"), and that Safeco failed to comply with the requirements of a performance bond issued on behalf of Iannuccillo. Defendants have each denied Tricore's allegations and Iannuccillo has asserted counterclaims against Tricore for breach of contract, quantum meruit and violations of Mass. G.L. Ch. 93A. Iannuccillo has also asserted cross-claims against Safeco alleging breach of the payment bond Safeco issued on behalf of Tricore, and violations of Mass. G.L. Chapters 93A and 176D.

II. Agenda for Scheduling Conference

- A. Discuss discovery schedule and pretrial motions;
- B. Discuss mediation and settlement; and
- C. Discuss timing for pretrial memoranda.

III. Non-Binding Mediation

The parties note that they have agreed to enter into non-binding mediation as soon as practical after Initial Disclosures are served. Therefore, in accordance with Local Rule 16.4 entitled "Alternative Dispute Resolution" and Rule 4.03 of the Expense and Delay

Reduction Plan entitled “Other Alternative Dispute Resolution Programs”, the parties would request that the Court refer this case to an alternative dispute resolution program.

IV. Pretrial Schedule

The parties agree to the Discovery Event Limitation set forth in Local Rule 26.1(C), and further agree to the following discovery schedule:

<u>Discovery Events</u>	<u>Time for Completion</u>
Initial Disclosures served	June 15, 2005
Mediation	No later than September 15, 2005
All fact discovery completed	March 1, 2006
All expert discovery completed	April 28, 2006

B. Pretrial Motions

Motions for Summary Judgment and/or other Dispositive motions filed and served	June 16, 2006
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C. Final Pretrial Conference and Trial Date

Final pretrial conference	On or after July 14, 2006
Trial date	On or after August 14, 2006

V. Other Matters

1. The possibility of resolving this action through alternative dispute resolution.
2. A Certification, pursuant to Local Rule 16.1(D)(3), signed by Tricore, Inc. and its counsel is attached hereto as Exhibit A. Certifications on behalf of Iannuccillo and Safeco will be submitted under separate cover..
3. Plaintiffs’ settlement proposal is attached hereto at Exhibit B.

RESPECTFULLY SUBMITTED,

TRICORE CORPORATION

SAFECO INSURANCE COMPANY OF
AMERICA

By its Attorneys,

By its Attorneys,

/s/ Kerry R. Northup

Edward D. Kutchin, Esq.

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R.P. IANNUCCILLO & SONS
CONSTRUCTION CO.

By its Attorney,

/s/ David M. Campbell

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CERTIFICATE OF SERVICE

I hereby certify that I have served the within document, by mailing a copy thereof, to:

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/s/ Kerry R. Northup

Kerry R. Northup

Dated: April 27, 2005

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CERTIFICATION OF PLAINTIFF

We, the undersigned, Edward D. Kutchin, Esq., counsel for plaintiff Tricore, Inc. (“Tricore”), and the undersigned authorized representative of Tricore, hereby affirm that we have conferred with a view to establishing a budget for the cost of conducting the full course – and various alternative courses including mediation – for the litigation and have considered the resolution of the litigation through the use of alternative dispute resolution programs such as those outlined in LR 16.4.

/s/ Paul Jacobson
Paul Jacobson
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/s/ Edward D. Kutchin
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